

Application No. : 10/692,835  
Filed : October 23, 2003

REMARKS

Claims 70-97 were pending in the application. By this paper, Applicant has canceled Claims 78-79, 90, and 96-97 without prejudice, amended Claims 70, 73, 74, 75, 80, 87, 89, 91, 94, and 95, and added new Claims 98-102. Hence, Claims 70-77, 80-89, 91-95, and 98-102 are presented for examination herein.

*Request for Continued Examination (RCE)*

Applicant files herewith an RCE for continued prosecution of the above-referenced application.

*§112 Rejections*

Claims 73-75, 89, 90, 94, and 95 stand rejected under Section 112(2) as being indefinite. By this paper, Applicant has amended (or cancelled) each of the foregoing claims so as to address the Examiner's concerns. Accordingly, Applicant respectfully submits that the aforementioned Section 112 rejections have been overcome.

*§102 Rejections*

**Claim 70** – Claim 70 stands rejected under Section 102 as being anticipated by Vasko, et al (US 4,683,709). By this paper, Applicant has amended Claim 70 to include limitations relating to (i) the recited saddle pad apparatus being adapted to support a saddle while maintaining both substantially unimpeded movement of the spinal column of a living subject and a desirable balance of a saddle and rider, and (ii) the recited pads being configured to raise the saddle at least partly off of only said withers region of the animal, so as to substantially avoid contact of the saddle with the top of the withers, thereby substantially eliminating pressure points in said withers region and maintaining the aforementioned balance.

Support for this amendment is found at, *inter alia*, page 16, line 28 through page 17, line 5 of Applicant's specification as filed.

Applicant submits that neither Vasko nor Woods (US 5,802,823) remotely teach or suggest pads being configured to raise the saddle at least partly off of only the withers region of the animal. As noted by the Examiner on page 4 of the Office Action regarding Claims 78 and 79 (now cancelled), Vasko ostensibly teaches "*apparatus ...further adapted to mitigate rocking of*

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said saddle back and forth ...due to thickness variation as shown in figs 5-8 and the straps 40-43 to tight {sic} the pad around the saddle or horse." {emphasis added}.

Hence, assuming *arguendo* that the Examiner's assertion regarding Vasko is correct (which Applicant herein traverses below), Vasko not only does *not* teach or suggest pads being  
5 configured to raise the saddle at least partly off of only the withers region of the animal (its pads cover pretty much the entire expanse of the animal's back as shown in Figs. 1-4 of Vasko), but it would further pointedly *teach away* from Applicant's invention as recited in Claim 70 by trying to control "rocking" through use of a varying thickness pad that varies in thickness as a function of front-back position on the animal's back. Contrast Applicant's solution of Claim 70; i.e.,  
10 selectively placing pads only in the withers region gaps or recesses to raise the saddle at least partly off of only the withers region.

As noted above, Applicant respectfully traverses the Examiner's assertion on page 4 of the Office Action regarding Vasko's teaching. Applicant can find no support in Vasko for the proposition stated by the Examiner; i.e., that Vasko teaches "*apparatus...further adapted to*  
15 *mitigate rocking of said saddle back and forth ...due to thickness variation as shown in figs 5-8 and the straps 40-43 to tight {sic} the pad around the saddle or horse.*" Vasko only discusses using the thickness variation for energy absorption, and seemingly makes no reference and indicates no recognition that the aforementioned change in thickness would mitigate rocking of its saddle:

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25  
"In FIG. 8 a sectional view of the major length of the insert 36 is shown. In this embodiment of the invention the thickness 70 has been decreased from the front end 49 of the insert to the back end 51. This allows the bulk of the energy absorbing material to be concentrated where the maximum amount of shock or energy transfer is experienced." Col. 4, lines 3-9 {emphasis added}.

Hence, Applicant respectfully requests that the Examiner provide specific support for the proposition that the aforementioned feature of Vasko (pad of varying thickness) actually does in fact mitigate rocking of the saddle, since (i) Vasko in no way indicates that it does, but rather  
30 indicates that the increased thickness is for energy absorption; and (ii) the Examiner has provided no other basis or evidence for support. Applicant submits that in fact the use of a pad that is thicker in front than in rear (as in Vasko) may literally have no appreciable effect on tilting or

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rocking, as such approaches are well known in the prior art, and ostensibly still suffered from the rocking and lack of balance issues described in Applicant's specification.

Woods teaches only embodiments with multiple pads disposed at varying locations of the animal:

5       *"The pads are located at the main pressure points typically resulting from-riding. The first shock absorbing pad is positioned for extending over the sides of the withers and shoulders, where the majority of saddle pressure is concentrated. The second shock absorbing pad is positioned beneath the location of a rider's legs, and the third shock absorbing pad is positioned to the rear of the horse's back at the other common pressure region caused by saddle use."* Col 2, lines 24-32  
10       {emphasis added}.

Applicant further notes that these pads of Woods are shock-absorbing pads only, and have no function whatsoever regarding maintaining rider and saddle balance as now recited in Claim 70.

15       In fact, Woods never even mentions or alludes to balance or rocking/tilting during riding.

Accordingly, Applicant respectfully submits that Claim 70 as presented herein is both novel and non-obvious over both Vasko and Woods, and in condition for allowance.

20       **Claim 91** - Claim 91 stands rejected under Section 102 as being anticipated by Vasko, et al (US 4,683,709). By this paper, Applicant has amended Claim 91 to include limitations relating to the recited said pad element being particularly shaped to accommodate and fit substantially within a particular withers region recess on the anatomy of an animal on which the pad element and saddle pad is utilized. Support for this amendment is replete throughout Applicant's specification; see, e.g., Fig. 3d, page 26, lines 10-12, and page 28, lines 14-17 of Applicant's  
25       specification as filed.

Applicant respectfully submits that neither Vasko nor Woods teach or suggest pad elements that are shaped to accommodate and fit substantially within a particular withers region recess on the anatomy of the animal. As previously noted, Vasko teaches large pad elements that effectively cover most of the animal's back. Woods teaches a plurality of pad elements, including  
30       a first element that generally covers the entire withers region, and not only the recess formed under the animal's shoulder:

*"The pads are located at the main pressure points typically resulting from-riding. The first shock absorbing pad is positioned for extending over the sides of the*

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5 *withers and shoulders, where the majority of saddle pressure is concentrated. The second shock absorbing pad is positioned beneath the location of a rider's legs, and the third shock absorbing pad is positioned to the rear of the horse's back at the other common pressure region caused by saddle use."* Col 2, lines 24-32 {emphasis added}.

10 Stated differently, Applicant's recited Claim 91 pad element is selectively shaped to fit within the recess or hollows under the withers only (so as to *inter alia* "fill the gap" and elevate the front of the saddle substantially off of the withers), and not generally over the entire withers region (Woods) or most of the animal's back (Vasko).

15 Applicant further respectfully traverses the Examiner's assertion on page 4 (last par.) of the Office Action relating to the pad element of Vasko being "particularly shaped to substantially accommodate a particular withers region artifact". As noted above, Vasko in no way teaches or suggests shaping its pad element for the withers region; if the Examiner is asserting that placement of the pad element of Vasko over the animal and then placing a saddle there upon (causing the pad element to conform to the shape of the animal's back including the withers), this is respectfully not consistent with Applicant's use of the word "shaped" in its specification. See, e.g., Page 26, lines 10-12 of Applicant's specification:

20 *"The shape of the forward inserts 320 is somewhat angled (such that the rounded edges of the elements 320 point downward somewhat when inserted within the pad 300, and the pad placed on the animal)." {emphasis added}*

25 Applicant submits that it is black-letter patent law that the claims must be interpreted in light of the specification (without importing limitations therefrom), and hence the Examiner's use of the word "shape" to refer to shaping due to compression is inconsistent with Applicant's intended meaning as supported by the specification, and hence is improper.

30 Accordingly, for the foregoing reasons, Applicant respectfully submits that Claim 91 as presented herein is both novel and non-obvious over both Vasko and Woods, and in condition for allowance.

**Claim 92** – Regarding the Examiner's assertions that Vasko teaches multiple densities in its uncompressed state ("(inherently taught because the pad has some sort of density when compressed or uncompressed) associated therewith *in its uncompressed state*") {emphasis

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added}, Applicant respectfully submits that this is specious reasoning and self-contradictory. Applicant's claim specifically states that the pad has a plurality of densities in its uncompressed state. Vasko in no way teaches or suggests multiple densities when the pad is uncompressed.

5 The Examiner's response effectively seems to be saying that Vasko's pad has a plurality of densities inherently *due to being in various states of compression while its in an uncompressed state*, which is respectfully nonsensical.

Applicant therefore submits that this rejection comprises clear and reversible error, and respectfully requests that the rejection be withdrawn.

10 §103 Rejections

**Claim 80** - Claim 80 stands rejected under Section 103 as being obvious over Vasko in view of Woods. By this paper, Applicant has amended Claim 80 to include limitations relating to: (i) the recited pads further elevating only a front portion of the saddle so as to maintain the recited substantial stability around the axis; and (ii) the recited sheepskin having a pelt hair length between  
15  $\frac{3}{4}$  inch and 1 inch.

Support for these amendments is found at, *inter alia*, page 16, line 28 through page 17, line 5, and page 20, line 29 through page 21, line 8 of Applicant's specification as filed.

20 Applicant submits that neither Vasko nor Woods (US 5,802,823) remotely teach or suggest pads being configured to raise a front portion of the saddle so as to maintain the recited substantial stability around an axis. As noted by the Examiner himself on page 4 of the Office Action regarding Claims 78 and 79 (now cancelled), Vasko teaches "*apparatus is further adapted to mitigate rocking of said saddle back and forth ...due to thickness variation as shown in figs 5-8 and the straps 40-43 to tight {sic} the pad around the saddle or horse.*" {emphasis added}.

25 Hence, Vasko not only does *not* teach or suggest pads being configured to raise only a front portion of the saddle so as to maintain the recited substantial stability around an axis (its pads cover pretty much the entire expanse of the animal's back as shown in Figs. 1-4 of Vasko), but it further pointedly teaches away from Applicant's invention as recited in Claim 80 by trying to control "rocking" through use of a varying thickness pad that varies in thickness as a function of  
30 front-back position on the animal's back. Contrast Applicant's solution of Claim 80; i.e., raising a front portion of the saddle at least partly off of only the withers region.

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Woods teaches only embodiments with multiple pads disposed at varying locations of the animal:

5       *"The pads are located at the main pressure points typically resulting from-riding. The first shock absorbing pad is positioned for extending over the sides of the withers and shoulders, where the majority of saddle pressure is concentrated. The second shock absorbing pad is positioned beneath the location of a rider's legs, and the third shock absorbing pad is positioned to the rear of the horse's back at the other common pressure region caused by saddle use."* Col 2, lines 24-32 {emphasis added}.

10       Applicant further notes that these pads of Woods are shock-absorbing pads only, and have no function whatsoever regarding maintaining substantial stability around an axis as now recited in Claim 80. In fact, Woods never even mentions or alludes to balance or rocking/tilting during riding.

15       As to the recited sheepskin thickness, Applicant's invention embodied in Claim 80 specifically selects a prescribed thickness of sheepskin (see page 20, line 29 through page 21, line 8 of Applicant's specification). As noted by the Examiner, Vasko in no way teaches or suggests sheepskin. Woods in no way teaches or suggests any particular selection, type, thickness, or properties of the sheepskin that Applicant can find. Applicant further submits that its selection of  
20       the recited pelt hair length is not merely an obvious choice by the ordinary artisan; substantial experimentation and effort was made by Applicant in identifying the appropriate length and properties for the sheepskin.

25       Similarly, Applicant also notes that "[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the 'subject matter as a whole' which should always be considered in determining the obviousness of an invention under 35 U.S.C. § 103." In re Sponnoble, 405 F.2d 578, 585, 160 USPQ 237, 243 (CCPA 1969). See MPEP 2141.02; *"The court found the inventor discovered the cause of moisture transmission was through the center plug, and there was no teaching in the prior art which would suggest the necessity of selecting applicant's plug material*  
30       *which was more impervious to liquids than the natural rubber plug of the prior art."* Woods does not in any way demonstrate an appreciation of the problem recognized Applicant's claimed invention; i.e., that different types, lengths, and/or densities of sheepskin can have an appreciable impact on animal comfort.

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Accordingly, Applicant respectfully submits that Claim 80 as presented herein is both novel and non-obvious over both Vasko and Woods, and in condition for allowance.

5       **Claim 87** - Claim 87 stands rejected under Section 103 as being obvious over Vasko in view of Woods. By this paper, Applicant has amended Claim 87 to include limitations relating to:  
      (i) the recited saddle pad adapted for use with a saddle on a high-withered equine; and (ii) the  
      recited pad elements being disposed and configured to substantially fill respective ones of gaps that  
      occur on the anatomy of the high-withered equine in its withers region, thereby substantially  
10       relieving this region from excessive pressure and contact with the saddle in a gullet channel  
      which would otherwise exist without the pad elements.

Support for these amendments is found at, *inter alia*, page 24, lines 10-15 of Applicant's specification as filed.

Applicant submits that neither Vasko nor Woods remotely teach or suggest pads being configured for use on high-withered equines. Applicant respectfully notes that simply because  
15       Woods mentions the "withers" of the animal, this in no way teaches or suggests recognition of the most salient problem that Applicant's invention of Claim 87 is intended to address; i.e., making the saddle comfortable for high-withered animals (i.e., those with a pronounced shoulder bones and associated pronounced recesses or gaps).

Applicant again notes that "[A] patentable invention may lie in the discovery of the  
20       source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the 'subject matter as a whole' which should always be considered in determining the obviousness of an invention under 35 U.S.C. § 103." In re Sponnoble, 405 F.2d 578, 585, 160 USPQ 237, 243 (CCPA 1969). See MPEP 2141.02; "The court found the inventor discovered the cause of moisture transmission was through the center plug, and there was no  
25       teaching in the prior art which would suggest the necessity of selecting applicant's plug material which was more impervious to liquids than the natural rubber plug of the prior art." Woods does not in any way demonstrate an appreciation of the problem recognized Applicant's claimed invention of Claim 87; i.e., that high-withered animals as a class are particularly hard to fit, and subject to pressure points induced by the saddle/pad due largely to their pronounced withers  
30       features.

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Accordingly, Applicant respectfully submits that Claim 87 as presented herein is both novel and non-obvious over both Vasko and Woods, and in condition for allowance.

**Claim 89** - Claim 89 stands rejected under Section 103 as being obvious over Vasko in view of Woods. By this paper, Applicant has amended Claim 89 to include limitations relating to the recited pad elements being adapted to interface only with gaps formed in the withers region of the equine so as to prop up only a front portion of the saddle and provide a substantially invariant relationship between the saddle and the equine during ambulation of said equine.

Support for these amendments is found at, *inter alia*, page 24, lines 16-30 of Applicant's specification as filed.

Applicant submits that neither Vasko nor Woods teaches or fairly suggests either: (i) the recited pad elements being adapted to interface only with gaps formed in the withers region of the equine (Vasko teaches pad elements that cover substantially most of the equine's back, and Woods teaches a plurality of pad elements distributed over six different locations on the animal); or (ii) propping up only a front portion of the saddle and provide a substantially invariant relationship between the saddle and the equine during ambulation of the equine.

**Claim 94** - Claim 94 stands rejected under Section 103 as being obvious over Vasko in view of Woods. By this paper, Applicant has amended Claim 94 to include limitations relating to the recited pad elements and pad cooperatively forming a raised feature element to raise only a frontal portion of a saddle disposed over top of said pad elements with respect to a withers region in order to mitigate tilting or rocking of the saddle.

First, Applicant notes that neither Vasko nor Wood teach or suggest raising only a frontal portion of a saddle to mitigate tilting or rocking. Vasko teaches use of pad elements that span most of the back surface of the animal, and Wood teaches a plurality of pads that are distributed both front and back under the saddle.

Second, Applicant notes that "[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the 'subject matter as a whole' which should always be considered in determining the obviousness of an invention under 35 U.S.C. § 103." In re Sponnoble, 405 F.2d 578, 585, 160 USPQ 237, 243 (CCPA 1969). See MPEP 2141.02; "The court found the inventor



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*discovered the cause of moisture transmission was through the center plug, and there was no teaching in the prior art which would suggest the necessity of selecting applicant's plug material which was more impervious to liquids than the natural rubber plug of the prior art.*" As previously noted, Vasko does not in any way demonstrate an appreciation of the problem  
5 recognized Applicant's claimed invention of Claim 94; i.e., that high-withered animals may be prone to increased pressure points and tilting or rocking of the saddle. Similarly, Woods in no way recognizes this problem either as previously discussed.

Hence, the combination of these references cannot render Applicant's Claim 94 invention obvious, since neither in any way recognizes the problem solved by Applicant's claimed  
10 invention.

#### *New Claims*

By this paper, Applicant has added new Claims 98-102. Applicant submits that each of these new claims is fully supported by the specification as filed, and hence no new matter has  
15 been added. Moreover, Applicant respectfully submits that each new claim defines patentable subject matter, in that *inter alia* neither Vasko nor Wood teaches or suggests the limitations found in each new claim.

#### *Other Remarks*

20 Applicant hereby specifically reserves the all rights of appeal (including those under the Pilot Appeal Brief program), as well as the right to prosecute claims of different or broader scope (including those of non-elected inventions) in a continuation or divisional application.

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for  
25 purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely  
30 to such claim or claims.

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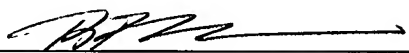
If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

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Respectfully submitted,  
GAZDZINSKI & ASSOCIATES

Dated: August 27, 2007

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